

**REMARKS**

Claims 1, 5-8, 10-11, 13, 15, 17-20, 22-24 and 41-48 are currently pending in this application. No new matter has been added. Claims 1, 13, 20, and 42 are independent. Reconsideration and allowance of the subject application is respectfully requested.

**Examiner Interview**

The Examiner is thanked for his time on March 4, 2009. During the interview claim 1 and Sako were discussed, but no agreement was reached.

**Rejections under 35 U.S.C. 102(b) and 103(a)**

Claims 1, 5, 6, 13, 20 and 42 are rejected under 35 U.S.C. 102(b) as anticipated by Sako et al. WO 02/37493. Applicants respectfully traverse this rejection.

Applicants respectfully submit that Sako does not teach all the features of amended independent claims, 1, 13, 20, and 42. For example, these independent claims have been amended to recite, *inter alia*, "a pit type, the pit type selected from at least one of wobbled pits and straight pits, the physical mark information is formed along a modulated unique pattern, wherein if the pit type selected is wobbled pits, at least a part of the wobbled pits forming the physical mark information is shifted from a central line of the wobbled pits." Figures 11A-11D and the corresponding description of Sako are alleged to disclose a physical mark as claimed. However, Applicants submit that while

Figures 11A-11C illustrate a method of forming straight pits as a physical mark and Figure 11D illustrates an entirely different method of forming wobbled pits as a physical mark, Sako does not disclose selecting at least one of wobbled pits or straight pits as the physical mark. Sako only discloses a first method of recording straight pits and then an entirely different second method used to record encrypt key information by forming wobbled pits.

In addition, Sako does not disclose if the wobbled pits are selected, a modulated unique pattern in which a part of the wobbled pits is shifted from the central line of the wobbled pits. For example, Sako only shows a straight set of pits in Figure 11D that are off a track center representing 1s and 0s. Sako describes each of these off track center pits as wobbled. However, Sako does not disclose or teach if the pit type selected is wobbled pits, a modulated unique pattern for the physical mark information having at least a part of the wobbled pits being shifted from a central line of the wobbled pits.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Kuroda ('844).

Claims 8, 10, 15, 17, 19, 22, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Ha et al.

Claims 11, 18, 23, 24, 44, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims as stated above, and further in view of Official Notice.

Applicants respectfully traverse the above 103 rejections. Applicants submit that dependent claims 7-8, 10-11, 15, 17-19, 22-24, and 43-46 are allowable at least for depending from allowable base claims. In addition, Applicants submit that none of the cited references (Kuroda, Ha, or Official Notice) cure the deficiencies identified above with reference to Sako. Therefore, dependent claims 7-8, 10-11, 15, 17-19, 22-24, and 43-46 are allowable.

**CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested.

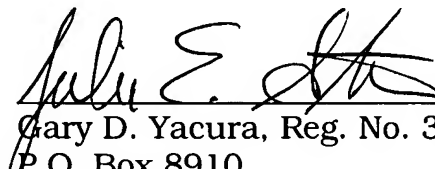
Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact Gary D. Yacura, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By

 43,158  
Gary D. Yacura, Reg. No. 35,416  
P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

GDY/JES/ame